

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| In the Matter of |) | |
| |) | |
| Amendment of Part 2 of the Commission's |) | ET Docket No. 00-258 |
| Rules to Allocate Spectrum Below 3 GHz |) | |
| For Mobile and Fixed Services to Support |) | |
| The Introduction of New Advanced |) | |
| Wireless Services, Including Third |) | |
| Generation Wireless Systems |) | |
| |) | |
| Amendment of Section 2.106 of the |) | ET Docket No. 95-18 |
| Commission's Rules to Allocate Spectrum |) | |
| At 2 GHz for the Mobile Satellite Service |) | |
| |) | |
| The Establishment of Policies and Service |) | IB Docket No. 99-81 |
| Rules for the Mobile-Satellite Service |) | |
| In the 2 GHz Band |) | |
| |) | |

OPPOSITION OF GLOBALSTAR, L.P.

Pursuant to Section 1.429 of the Commission's Rules, Globalstar, L.P., hereby opposes the "Petition for Reconsideration" filed by the Cellular Telecommunications & Internet Association ("CTIA") regarding the Commission's denial of CTIA's "Petition for Rulemaking" seeking reallocation of Mobile-Satellite Service ("MSS") spectrum at 2 GHz.¹

¹ See Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 01-224, ¶ 23 (released Aug. 20, 2001), summarized at 66 Fed. Reg. 47618 (Sept. 13, 2001) ("Further 3G NPRM"). CTIA's Petition appeared on Public Notice at 66 Fed. Reg. 55666 (Nov. 2, 2001).

On July 17, 2001, the Commission granted Globalstar a license to launch and operate an MSS system using spectrum at 2 GHz.² Accordingly, Globalstar has an interest in this proceeding because CTIA seeks to eliminate the MSS spectrum allocation and vacate the grant of Globalstar's license.

I. CTIA'S PETITION SHOULD BE DISMISSED AS MOOT.

CTIA's Petition has two objectives. First, CTIA asks the Commission to reverse the denial of its Petition for Rulemaking and have that petition placed on public notice to develop a record on reallocation of the 2 GHz MSS spectrum. Second, CTIA claims that consideration of its Petition for Rulemaking was a necessary precedent to the 2 GHz MSS licensing decisions³ and the initiation of another rulemaking on the issue of granting MSS licensees the right to flexible use of the spectrum pursuant to Section 303(y) of the Communications Act of 1934, as amended.⁴ CTIA seeks to overturn the 2 GHz MSS licensing decisions and have the Flexible Use NPRM held up, pending a decision on the 2 GHz MSS spectrum allocation.

CTIA's Petition for Reconsideration is moot, and should be dismissed. First, with respect to the 2 GHz MSS allocation, the Commission has asked for comment

² See Globalstar, L.P., DA 01-1634 (released July 17, 2001).

³ On July 17, 2001, the International Bureau granted eight applications for launch and operation of MSS systems at 2 GHz.

⁴ See Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band, FCC 01-225 (released Aug. 17, 2001) ("Flexible Use NPRM").

on whether to reallocate that spectrum in the Further 3G NPRM. Comments were filed on October 22, 2001, and reply comments on November 8, 2001. CTIA and others have had a full and fair opportunity to submit information on the recommended use of that spectrum -- the same information that would have been submitted in response to CTIA's Petition for Rulemaking.

Second, with respect the 2 GHz MSS licensing orders, all those orders were made subject to the outcome of the allocation issues in the Further 3G NPRM.⁵ Therefore, there is no need to vacate those orders and re-issue them in accordance with the decision in the rulemaking proceeding. The Commission has already noted that the licensing orders may be modified depending upon the decision on the 2 GHz MSS allocation.

Third, with respect to the Flexible Use NPRM, that proceeding addresses MSS generally, not just 2 GHz MSS. If the Commission does authorize flexible use, that decision would apply not only to the 2 GHz MSS licenses as currently issued, but also the 2 GHz MSS licenses as modified, if modified to comply with the decisions in the Further 3G NPRM. Therefore, the Commission's decision on the 2 GHz MSS allocation is not in any way a condition precedent to the Flexible Use NPRM.

Although CTIA and its constituents apparently have limitless resources to pursue procedural challenges to patently valid Commission actions, the Commission and other regulated entities with more limited resources cannot, and should not be

forced to expend those resources addressing the same issues in multiple forums. The Commission has repeatedly recognized that subsequent proceedings may moot out issues raised in petitions for reconsideration of rulemaking decisions, and that it is not required to duplicate its efforts to respond to such petitions.⁶

In this case, CTIA's Petition for Rulemaking has been rendered moot by subsequent proceedings (in which CTIA is participating), and the issues raised by CTIA's Petition for Rulemaking will fully be addressed in those proceedings. Therefore, CTIA's Petition for Reconsideration is moot and should be dismissed.

II. CTIA'S PETITION FOR RULEMAKING SHOULD HAVE BEEN DISMISSED AS AN UNTIMELY PETITION FOR RECONSIDERATION OF THE 2 GHz MSS ALLOCATION ORDERS.

CTIA's Petition for Rulemaking should have been dismissed as nothing more than a late-filed petition for reconsideration of the 2 GHz MSS allocation orders. The Commission decided several years ago that an allocation of 70 MHz for MSS at 2 GHz in the United States serves the public interest.⁷ CTIA offered no reason why that finding was in error.

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⁵ See Further 3G NPRM, ¶ 30.

⁶ See, e.g., Service Rules for the 746-764 and 776-794 MHz Bands, 15 FCC Rcd 21070, 21072, ¶ 4 (2000); Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, 15 FCC Rcd 5231 (2000).

⁷ See Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, 12 FCC Rcd 7388, 7394-95, ¶¶ 13-15 (1997) ("2 GHz MSS Allocation Order"), aff'd on recon, 13 FCC Rcd 23949 (1998). During the rulemaking on the 2 GHz MSS allocation, terrestrial
(Footnote continued...)

Rather, CTIA focuses on the marketing difficulties of a few MSS companies and extrapolates from those vignettes its hypothesis that no spectrum is needed for MSS as a service.⁸ It is too late for the United States to shift the national and international plans for the 2 GHz MSS allocation that were debated and resolved in the 2 GHz MSS allocation orders. The United States led the effort to achieve the allocation for MSS in the 2 GHz bands at the 1992 World Administrative Radio Conference and to harmonize the allocations for 2 GHz MSS at the 1995 World Radiocommunication Conference.⁹ The Commission initiated the U.S. allocation proceeding in 1995, and completed it in 1997.

Also in 1997, the Commission opened a filing window for 2 GHz MSS applications. Nine applications and letters of intent were filed in September 1997, and four years later, the Commission has issued authorizations. Although implementation of service has not yet commenced, complex satellite systems require a long lead time and coordination of many international and national administrative proceedings. Globalstar, and other entities with a global service

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service providers objected to the size of the allocation, but the Commission rejected their arguments based on the need for MSS. *Id.*, ¶ 14.

⁸ The issues related to the success of MSS have been fully addressed in comments filed in response to the Further 3G NPRM. To the extent needed, Globalstar hereby incorporates by reference its Comments and Reply Comments filed on these issues in this proceeding on October 22, 2001 and November 8, 2001, respectively.

⁹ See 2 GHz MSS Allocation Order, 12 FCC Rcd at 7389-92.

mission, have been developing plans for use of the spectrum for years in conjunction with the United States' consideration of the 2 GHz MSS allocation.

At the very end of this process, CTIA claims that the allocation is not needed and that it was irrational for the Commission to grant 2 GHz MSS licenses while the issues raised in its Petition for Rulemaking were pending. CTIA's Petition trails by several years the long history of the 2 GHz MSS proceeding in which the issues raised by CTIA were addressed. Moreover, the United States and multiple national and international organizations have recognized the need for a global allocation for MSS at 2 GHz. In granting 2 GHz MSS licenses, the Commission was obviously working from a full and complete record based squarely on the allocation orders. Similarly, the Flexible Use NPRM addresses an issue that has been raised in the past regarding several other services, and is, indeed, "the Commission's favored approach to spectrum management and licensing in recent years."¹⁰

CTIA's Petition for Rulemaking is untimely and unavailing in the face of the Commission's explicit public interest finding based on a full record in the 2 GHz MSS allocation proceedings. Accordingly, its Petition for Rulemaking should have been dismissed as untimely, and CTIA's Petition for Reconsideration should, therefore, also be dismissed.¹¹

¹⁰ Flexible Use NPRM, ¶ 2.

¹¹ See, e.g., Association of College & Univ. Telecommunications Administrators, 8 FCC Rcd 1781 (1993) (dismissing "petition for clarification" that sought
(Footnote continued...)

III. CONCLUSION

For the reasons set forth above, CTIA's Petition for Reconsideration should be dismissed.

Respectfully submitted,

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Date: November 19, 2001

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reconsideration of rule adopted nine months earlier); 47 U.S.C. § 405 (setting 30-day period from Public Notice for filing petitions for reconsideration).

CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 19th day of November, 2001, caused to be served true and correct copies of the foregoing “Opposition of Globalstar, L.P.” upon the following parties via first-class United States mail, postage prepaid:

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